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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EFG Bank AG, CAYMAN BRANCH; WELLS FARGO BANK, NATIONAL ASSOCIATION, as securities intermediary for EFG BANK AG, CAYMAN BRANCH; DLP MASTER TRUST; DLP MASTER TRUST II; GWG DLP MASTER TRUST; AND GREENWICH SETTLEMENTS MASTER TRUST,

Plaintiffs,

v.

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,

Defendant.

Case No. 2:17-cv-00817-JFW-KS

PLAINTIFFS' OPPOSITION TO DEFENDANT THE LINCOLN NATIONAL LIFE INSURANCE COMPANY'S MOTION TO DISMISS WITH RESPECT TO THE WISCONSIN POLICY

Date: June 12, 2017
Time: 1:30 p.m.
Dept: Courtroom 7A
Judge: Hon. John F. Walter

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I. INTRODUCTION

The Court should deny Lincoln's motion to dismiss with respect to the Wisconsin policy at issue in this case because the Court can, and should, exercise pendent personal jurisdiction over Lincoln.

Plaintiffs filed this action alleging that Lincoln violated the express and implied terms of certain of its in-force Legend Series Universal Life Insurance policies by improperly raising the cost of insurance rates on the policies. Of the 39 policies at issue in this case, 38 were issued in California. *See* Declaration of Khai LeQuang in Support of Plaintiffs' Opposition to Lincoln's Motion to Transfer (ECF No. 29-1), ¶¶ 5-6, Exs. C-D. One was issued in Wisconsin. *Id*.

Lincoln does not challenge the Court's personal jurisdiction over it with respect to the 38 California policies. It seeks only to dismiss Plaintiffs' claims under the Wisconsin policy on the grounds that Lincoln (a) is not subject to general jurisdiction in California; and (b) is not subject to specific jurisdiction with respect to the Wisconsin policy. The Court, however, does not need to consider these arguments because it may exercise pendent personal jurisdiction over the Wisconsin policy if Plaintiffs' claims under the Wisconsin policy arise "out of a common nucleus of operative facts" as Plaintiffs' claims under the California policies. As Lincoln itself concedes in seeking to transfer this action, they do. This Court should therefore exercise pendent personal jurisdiction.

II. THE COURT HAS PERSONAL JURISDICTION OVER LINCOLN WITH RESPECT TO PLAINTIFFS' CLAIMS UNDER THE CALIFORNIA POLICIES

There is no dispute that the Court has specific personal jurisdiction over Lincoln with respect to Plaintiffs' claims under the California policies. To establish specific jurisdiction over Lincoln under the California policies, the Court applies

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the following three-part test for specific jurisdiction:

> (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privileges of conducting activities in the forum. . . (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must . . . be reasonable.

CE Distrib., LLC v. New Sensor Corp., 380 F.3d 1107, 1111 (9th Cir. 2004) (citing *Harris Rutskey & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003)).

Here, Lincoln purposefully availed itself of the privilege of conducting activities in California by marketing, selling, and issuing the Legend Series Universal Life Insurance policies in California to California residents, including the California policies at issue in this case. Lincoln thereby invoked the benefits and protections of California law that governs those policies. Second, Plaintiffs' claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief arise out of Lincoln's decision to raise the cost of insurance rates on those California policies. Third, based on these facts, the exercise of jurisdiction is reasonable and comports with fair play and substantial justice. Accordingly, the Court has personal jurisdiction over Lincoln under the California policies.

III. THE COURT MAY EXERCISE PENDENT PERSONAL JURISDICTION OVER LINCOLN WITH RESPECT TO PLAINTIFFS' CLAIMS UNDER THE WISCONSIN POLICY

Having established personal jurisdiction over Lincoln under the California policies, the Court may then exercise pendent personal jurisdiction over Lincoln with respect to the Wisconsin policy because Plaintiffs' claims under the Wisconsin policy arise "out of a common nucleus of operative facts." *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004) (citations omitted). As the Ninth Circuit has stated:

> [A] court may assert pendent personal jurisdiction over a defendant with respect to a claim for which there is no independent basis of personal jurisdiction so long as it arises out of a common nucleus of operative facts with a claim in the same suit over which the court does have personal jurisdiction.

Id.; *see also CE Distrib., LLC*, 380 F.3d at 1113-14 (reversing trial court's finding of lack of personal jurisdiction and recognizing the doctrine of pendent personal jurisdiction); *LY Retail LLC v. Ison Furniture LLC*, No. CV 13-00625-BRO (JEMx), 2014 WL 12591633, at *9 (C.D. Cal. Jan. 6, 2014) (exercising pendent personal jurisdiction). "When a defendant must appear in a forum to defend against one claim, it is often reasonable to compel that defendant to answer other claims in the same suit arising out of a common nucleus of operative facts." *Action Embroidery Corp.*, 368 F.3d at 1181. In such cases, a district court has discretion to exercise pendent personal jurisdiction with the goal of promoting "judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties." *Id.*

In *CE Distrib., LLC*, for example, the plaintiff sued the defendant (a competitor) for (1) tortious interference with contract based on allegations that the defendant interfered with plaintiff's exclusive importer agreement with a third party; (2) breach of contract (a distribution agreement) between the plaintiff and the defendant; and (3) declaratory judgment that the plaintiff's sale of certain products did not infringe the defendant's trademark. *See CE Distrib., LLC*, 380 F.3d at 1109-10. The district court dismissed all three claims for lack of personal jurisdiction. *Id.* at 1109. The Ninth Circuit reversed, finding that the court had specific personal jurisdiction over the defendant with respect to the tortious interference claim. *Id.* at 1111-13. The Ninth Circuit also remanded the matter as to the second and third claims to allow the trial court to determine whether to exercise pendent personal jurisdiction over those claims. *Id.* at 1114. As to the breach of contract claim, the Ninth Circuit observed that the plaintiff's "claims for tortious interference with contract and for breach of contract arise from a common nucleus of facts [such that] the intentional interference claim may serve as the basis for the exercise of pendent personal jurisdiction over the breach of contract claim." *Id*. at 1113. The court also noted that "the exercise of pendent personal jurisdiction may also be appropriate for the declaratory relief claim" because even if "the facts underlying the declaratory relief claim do not exactly track the facts underlying the [first two claims], the core facts of the claims are the same." *Id*. at 1113-14.

Here, there can be no dispute that Plaintiffs' claims under the Wisconsin policy arise out of the same nucleus of operative facts as their claims under the California policies – Lincoln's issuance of Legend Series Universal Life Insurance policies and Lincoln's increasing of the cost of insurance rates on the policies.

The Wisconsin policy and California policies also contain identical "Cost of Insurance Rates" provisions, which state:

> The monthly cost of insurance rates are determined by [Lincoln]. Rates will be based on our expectation of future mortality, interest, expenses, and lapses. Any change in the monthly cost of insurance rates used will be on a uniform basis for Insureds of the same rate class.

Declaration of Khai LeQuang in Support of Plaintiffs' Opposition to Lincoln's Motion to Dismiss With Respect to the Wisconsin Policy (filed concurrently herewith), ¶ 3, Ex. A at 8; *id.*, ¶ 4, Ex. B at 8. They also contain identical terms and provisions relating to the "guaranteed interest rate." *Id.* ¶ 3, Ex. A at 4, 8; *id.*, ¶ 4, Ex. B at 4, 8.

Indeed, in asking the Court transfer this case to the Eastern District of Pennsylvania where six class actions have been consolidated against Lincoln, Lincoln states that "the challenges [to the cost of insurance rate increase] asserted here . . . are indistinguishable from those raised by the plaintiffs in Pennsylvania" and that "[t]he action by Lincoln Life at issue here—its decision to raise the cost-of-insurance ("COI") rates on the Legend Series policies—is the same as that at issue in Pennsylvania." Lincoln's Motion to Transfer Venue (ECF No. 21) at 1. Lincoln has made no distinction, and there appears to be none, with respect to Lincoln's decision to increase cost of insurance rates on the Wisconsin policy as well.

Accordingly, the Court should exercise pendent personal jurisdiction over Lincoln with respect to Plaintiffs' claims under the Wisconsin policy. By exercising pendent personal jurisdiction, the goals of "judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties" will be served. *Action Embroidery Corp.*, 368 F.3d at 1181.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Lincoln's Motion to Dismiss Plaintiffs' Claims with Respect to the Wisconsin Policy and exercise pendent personal jurisdiction over Lincoln.

Dated: May 18, 2017

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